Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

20 September 2019 *

(Civil service – Officials – Disciplinary proceedings – Psychological harassment – Disciplinary penalty – Downgrading and resetting of promotion points to zero – Rejection of the applicant's request for assistance – Manner of conducting the administrative investigation – Requirement for impartiality – Right to be heard – Procedural irregularity – Consequences of procedural irregularity)

In Case T-47/18,

UZ, official of the European Parliament, represented by J.-N. Louis, lawyer,

applicant,

v

European Parliament, represented initially by V. Montebello-Demogeot and Í. Ní Riagáin Düro, and subsequently by V. Montebello-Demogeot and I. Lázaro Betancor, acting as Agents,

defendant,

APPLICATION based on Article 270 TFEU seeking, first, annulment of the Parliament's decision of 27 February 2017 to impose on the applicant the disciplinary penalty of downgrading her from grade AD 13, step 3, to grade AD 12, step 3, and resetting her promotion points acquired at grade AD 13 to zero and, second, annulment of the decision rejecting her request for assistance,

THE GENERAL COURT (Fifth Chamber),

composed of D. Gratsias, President, I. Labucka and I. Ulloa Rubio (Rapporteur), Judges,

Registrar: M. Marescaux, Administrator,

having regard to the written part of the procedure and further to the hearing on 9 April 2019,

gives the following

* Language of the case: French.

Judgment

Background to the dispute

1 The applicant, UZ, held the position of head of unit at the European Parliament from 1 January 2009 onwards. She was latterly classified as grade AD 13, step 3.

2 On 24 January 2014, 14 of the 15 members of her unit ('the complainants') sent to the Secretary-General of the Parliament a request for assistance, pursuant to Article 24 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), alleging psychological harassment on the part of the applicant.

3 Following that request, the Director-General of the Directorate-General for Personnel ('DG PERS') informed the complainants by letter of 17 February 2014 that provisional measures had been put in place. These consisted, inter alia, of transferring management of the unit concerned to another person and of opening an administrative investigation.

4 By letter of 19 March 2014, the Secretary-General of the Parliament informed the applicant that an administrative investigation had been opened.

5 The applicant was heard on 20 November 2014 by the Director-General of DG PERS.

6 Two investigators (one of whom replaced the other on the latter's retirement) drew up two reports, dated 3 March and 17 November 2015. Following those reports, the applicant was heard by the Director-General of DG PERS on 17 June and 2 December 2015 respectively.

7 By letter of 6 January 2016, the applicant was informed by the Secretary-General of the Parliament that her failure to comply with obligations under the Staff Regulations had been referred to the Disciplinary Board.

8 The applicant was heard by the Disciplinary Board on 17 February, 9 March, 8 April and 26 May 2016.

9 On 25 February 2016, the applicant sent a letter to the Director-General of DG PERS, who replied by a letter of 1 March 2016.

10 On 25 July 2016, the Disciplinary Board unanimously adopted its opinion, the conclusions of which read as follows:

> '28. In the light of the foregoing, the Disciplinary Board proposes that the [Appointing Authority] should impose one overall penalty on [UZ] for the whole of her misconduct, consisting of a downgrading by one grade within the same function group.
>
> 29. In view of [UZ]'s serious failings in staff management and with regard to the institution's duty of care to [UZ] and to other persons likely to be affected by her conduct, the Disciplinary Board is of the opinion that the [Appointing Authority], to the extent allowed by the Staff Regulations, should seriously consider reassigning her to another type of post within the Secretariat-General, in any event, as she has herself requested, to a different [Directorate-General] …'

11 By letter of 7 September 2016, the Disciplinary Board sent its opinion to the applicant.

12 By decision of 20 September 2016, the Secretary-General of the Parliament authorised the Director-General of DG PERS to represent him when the applicant was heard pursuant to Article 22 of Annex IX to the Staff Regulations and instructed him to transmit any comments the applicant might have concerning the Disciplinary Board's opinion that had been sent to her on 7 September 2016.

13 By email of 4 October 2016, the Director-General of DG PERS invited the applicant to attend a hearing on 20 October 2016, in accordance with Article 22(1) of the Staff Regulations, so that she could comment on the Disciplinary Board's opinion.

14 The applicant acknowledged receipt of that invitation on 6 October 2016 and, by letter of 11 November 2016, sent her comments to the Director-General of DG PERS.

15 On 14 November 2016, the applicant was heard by the Director-General of DG PERS. During that hearing, the applicant submitted a note and requested assistance from the Parliament as a result of threats made against her by members of her unit.

16 By letter of 30 November 2016, the Director-General of DG PERS proposed that the applicant be transferred temporarily to another unit.

17 By email of 9 January 2017, the applicant accepted that transfer.

18 By decision of 27 February 2017, the Secretary-General of the Parliament took the decision to impose on the applicant the disciplinary penalty of a reduction in grade in the same function group, from grade AD 13, step 3, to grade AD 12, step 3, with the promotion points she had acquired in her former grade AD 13 being reset to zero ('the decision to downgrade and reset the promotion points to zero').

19 By letter of 2 March 2017, the Secretary-General of the Parliament informed the applicant of the decision to downgrade and reset the promotion points to zero and proposed that she be reassigned to the post of administrator in a different unit.

20 By letter of 3 April 2017, the applicant submitted to the Secretary-General of the Parliament her observations on the proposal to reassign her to a different unit.

21 By letter of 9 May 2017, the Secretary-General of the Parliament acknowledged receipt of the applicant's observations and informed her of the decision to reassign her to the job of 'administrative manager' in a different unit.

22 By letter of 6 June 2017, the applicant lodged a complaint with the Appointing Authority of the Parliament against the decision to downgrade and reset the promotion points to zero.

23 By letter of 14 June 2017, the applicant lodged a complaint with the Secretary-General of the Parliament against the implied rejection of her request for assistance.

24 By letter of 20 July 2017, the Director-General of DG PERS rejected the applicant's request for assistance.

25 By letter of 6 October 2017, the President of the Parliament rejected the complaints made by the applicant in her letters of 6 and 14 June 2017.

26 By letter of 17 November 2017, the applicant asked the Secretary-General of the Parliament whether the administration had identified a vacancy matching her training, professional experience and preferences.

27 By letter of 18 January 2018, the Secretary-General of the Parliament replied that the reassignment of the applicant to the post of 'administrative manager' in a different unit was to be regarded as permanent.

Procedure and forms of order sought

28 By application lodged at the Court Registry on 29 January 2018, the applicant brought this action. By letter lodged at the Court Registry on the same date, supplemented by a letter of 5 February 2018, she made an application for anonymity on the basis of Article 66 of the Rules of Procedure of the General Court, which the Court granted by decision of 4 April 2018. On 23 April 2018, the Parliament lodged its defence.

29 On 6 August 2018, the applicant lodged a reply and, on 4 October 2018, the Parliament lodged a rejoinder.

30 By reasoned statement lodged at the Court Registry on 18 October 2018, the applicant requested that a hearing be held, pursuant to Article 106 of the Rules of Procedure.

31 On a proposal from the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral part of the procedure and, by way of measures of organisation of procedure pursuant to Article 91 of the Rules of Procedure, requested the parties to answer certain questions and the Parliament to submit certain documents.

32 On 18 March 2019, the applicant and the Parliament answered the questions and the Parliament submitted the requested documents.

33 The parties presented oral argument and answered the questions put by the Court at the hearing on 9 April 2019.

34 By way of a new measure of organisation of procedure adopted at the hearing, the Court requested the Parliament to answer further questions in writing and to submit further documents. The Parliament answered those questions and provided the documents requested on 16 April 2019 and the applicant submitted her observations on 6 May 2019.

35 The applicant claims that the Court should:

– annul the decision to downgrade and reset the promotion points to zero;

– annul the decision to reject her request for assistance;

– order the Parliament to pay the costs.

36 The Parliament contends that the Court should:

– dismiss the application;

– order the applicant to pay the costs.

Law

The decision to downgrade and reset the promotion points to zero

37 The applicant relies, in essence, on two pleas in law in support of her action against the decision to downgrade and reset the promotion points to zero. The first plea alleges that there were irregularities in the administrative investigation; the second plea alleges that there were irregularities in the proceedings of the Disciplinary Board and a failure by the competent authority to hold a hearing at the conclusion of those proceedings.

Irregularities in the administrative investigation

38 It must be borne in mind that EU law requires administrative procedures to be conducted in compliance with the rights guaranteed by the principle of good administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union. Those guarantees include an obligation on the competent institution to examine the relevant facts of the case in question with care and impartiality. The right of every person to have his or her affairs handled impartially encompasses, on the one hand, subjective impartiality, in so far as no member of the institution concerned who is responsible for the matter may show bias or personal prejudice, and, on the other hand, objective impartiality, in so far as there must be sufficient guarantees to exclude any legitimate doubt in that regard (see judgment of 11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 155 and the case-law cited).

39 It is in the light of those considerations that it is necessary to examine the applicant's arguments alleging, in essence: (i) a failure by the competent authority to hear her; (ii) the involvement of several investigators in the administrative procedure; (iii) a lack of impartiality on the part of the investigators; (iv) a failure to take account of the complainants' conduct and (v) a failure to take account of testimonies in her favour.

40 As regards the first argument, alleging that the applicant was not heard by the competent Appointing Authority, it should be noted that the applicant stated at the hearing, and it was recorded in the hearing minutes, that she was not pursuing that argument.

41 As regards the second argument, concerning the involvement of several investigators in the administrative investigation, it is clear from the explanations given by the Parliament that there were two aspects to the administrative investigation. Two investigators were appointed to deal with the 'disciplinary' aspect, which covered various breaches by the applicant of her obligations under the Staff Regulations with the exception of harassment, while a third investigator was appointed to deal with the 'harassment' aspect.

42 It should be recalled that the hearing held at the stage of the administrative investigation, at the request of the Appointing Authority, is designed to enable the Appointing Authority to consider whether it is appropriate to refer the matter to the Disciplinary Board pursuant to Article 12 of Annex IX to the Staff Regulations and, if so, to draw up the report stating the conduct complained of and, where appropriate, the circumstances in which it occurred (see, by analogy, judgment of 19 March 1998, *Tzoanos* v *Commission*, T-74/96, EU:T:1998:58, paragraph 340).

43 In that regard, it is clear from the case-law that the authority responsible for an administrative investigation has broad discretion with regard to the conduct of that investigation (judgments of 11 July 2013, *Tzirani* v *Commission*, F-46/11, EU:F:2013:115, paragraph 124, and of 18 September 2014, *CV* v *EESC*, F-54/13, EU:F:2014:216, paragraph 43; see also, to that effect, judgment of 16 May 2012, *Skareby* v *Commission*, F-42/10, EU:F:2012:64, paragraph 38).

44 Therefore, since the applicant has not shown how the involvement of several investigators in the administrative investigation constituted an infringement of her rights, the second argument must be rejected.

45 As regards the third argument, alleging a lack of impartiality on the part of the investigators, the applicant submits, inter alia, first, that one of the two investigators in charge of the 'disciplinary' aspect had, prior to the instigation of any procedure relating to her, acted as advisor to one of the complainants. Therefore, that investigator no longer had the requisite independence or impartiality to participate in the administrative investigation. That amounted to an infringement of the applicant's rights of defence. Secondly, the applicant alleges that, when hearing one of the complainants, the investigator in charge of the 'harassment' aspect inaccurately informed that complainant that he had only just been notified of the matter in question, whereas he had been consulted as soon as the complainants made their request for assistance. He should therefore never have accepted the role of investigator in relation to the harassment accusations, as his views were necessarily influenced by the testimonies obtained at the inquiry under Article 24 of the Staff Regulations.

46 With regard to one of the investigators in charge of the 'disciplinary' aspect, the Parliament submits that the Secretary-General has already explained to the applicant that the purpose of the meeting in question was primarily to deal with the arrangements for a parental leave application and that, at the time of that meeting, the member of DG PERS who met with the complainant in question was not yet aware that he was to be appointed as investigator. Furthermore, no information relating to the present case was divulged. With regard to the investigator in charge of the 'harassment' aspect, the Parliament explained at the hearing that the investigator in question was the Chair of the Advisory Committee on Harassment and its Prevention at the Workplace, that it was on that basis that he was aware of the present case and that there was no reason to conclude that any conflict of interest arose.

47 In relation to the lack of impartiality of one of the two investigators in charge of the 'disciplinary' aspect, it appears from the applicant's response to the measure of organisation of procedure that, at the hearing on 26 May 2016, one of the complainants claimed to have met the investigator in question prior to the launch of the administrative investigation into the applicant. According the testimony of that complainant, he had gone to Luxembourg (Luxembourg) to enquire about a potential investigation brought against him by the European Anti-Fraud Office (OLAF), having been informed by colleagues that the applicant's husband, at the instigation of the applicant, had denounced him to OLAF in relation to alleged parental leave irregularities 'as an act of revenge' 'because the colleague in question [had] sabotaged her work'.

48 The Parliament does not deny that that meeting took place, prior to the launch of the administrative investigation, between one of the complainants and a future investigator but maintains, first, that no information concerning the matter in question was divulged by the latter at that meeting and, secondly, that the member of DG PERS could not know that he would be appointed investigator.

49 As regards the Parliament's first argument, according to the response it gave to the measure of organisation of procedure, there is nothing to corroborate the content of the conversation between the complainant concerned and the member of DG PERS.

50 In any event, as regards the Parliament's second argument, as has just been pointed out, objective impartiality requires the institution to offer sufficient guarantees to exclude any legitimate doubt (see paragraph 38 above).

51 In the present case, it appears from the testimony of one of the complainants (see paragraph 47 above) that a member of DG PERS had met with that complainant prior to the launch of the investigation and that, during that meeting, he had told the said member of DG PERS, who was later appointed as an investigator, that he had been denounced to OLAF by the applicant or, more specifically, through the intermediary of her husband, 'as an act of revenge', in relation to alleged irregularities.

52 It must be held that such a testimony could give the applicant legitimate cause to doubt the impartiality of the investigator, who could have been influenced by the particularly malicious nature of the alleged conduct reported to him.

53 Furthermore, it should be noted that the applicant had questioned that lack of impartiality in the note she submitted to the Parliament at her hearing on 14 November 2016 (see paragraph 15 above).

54 In that regard, it should be stated that there is nothing to suggest that it would have been difficult for the Parliament to choose, from among its officials, a person with no prior knowledge of the facts of the case, thus avoiding any legitimate doubt in respect of the applicant.

55 It must therefore be concluded that the Parliament should not have appointed an investigator who had met with one of the complainants prior to the launch of the investigation.

56 Such a finding cannot be called into question by the fact that the Parliament stated at the hearing that OLAF had not opened an investigation in that regard.

57 As regards the alleged lack of impartiality of the investigator for the 'harassment' aspect, it is clear from the explanations given by the Parliament at the hearing that, before being appointed investigator for the 'harassment' aspect of the administrative enquiry on the basis of Article 86(2) of the Staff Regulations, he had chaired the Advisory Committee on Harassment and its Prevention at the Workplace which, following the complainants' request for assistance under Article 24 of the Staff Regulations, had concluded that the management of the unit of which the applicant was the head should be passed to another person.

58 It must therefore be held, in view of the conclusion reached by the Advisory Committee on Harassment and its Prevention at the Workplace, that, at the time of his appointment, the investigator for the 'harassment' aspect could already have held a negative opinion of the applicant. That fact is also liable to call into question the objective impartiality of the investigators.

59 Therefore, it must be concluded that, both by appointing as investigator in the administrative investigation a member of DG PERS who had already met one of the complainants and by appointing as another investigator the Chair of the Advisory Committee on Harassment and its Prevention at the Workplace which decided to remove the applicant, the Parliament did not offer sufficient guarantees to exclude any legitimate doubt within the meaning of the case-law referred to in paragraph 38 above.

60 It is, however, settled case-law that a procedural irregularity can justify the annulment of a measure only if, had it not been for such an irregularity, the outcome of the procedure might have been different (see judgment of 14 February 2017, *Kerstens* v *Commission*, T-270/16 P, not published, EU:T:2017:74, paragraph 74 and the case-law cited).

61 In the context of that examination, it has been held that it is important to take account of all the circumstances of the case and, in particular, of the nature of the allegations and the scale of the procedural irregularities committed in relation to the guarantees which the official may have been given (see judgment of 15 April 2015, *Pipiliagkas* v *Commission*, F-96/13, EU:F:2015:29, paragraph 65 and the case-law cited).

62 The disciplinary procedure laid down by Annex IX to the Staff Regulations provides for two distinct stages. The first stage consists in an impartial administrative investigation (see paragraph 38 above), initiated by a decision of the Appointing Authority, followed by the drafting of an investigation report, and closed, after the person concerned has been heard on the facts alleged against him or her, by conclusions drawn from that report. The second stage consists in the disciplinary proceedings proper, initiated by the Appointing Authority on the basis of that investigation report, and consists either in the initiation of disciplinary proceedings without consultation of the Disciplinary Board, or in the matter being referred to that board, on the basis of a report drawn up by the Appointing Authority in the light of the conclusions of the investigation and of the comments submitted by the person concerned in relation to that investigation.

63 It follows that the administrative investigation affects the exercise by the Appointing Authority of its discretion as to the action to be taken further to that investigation and that that action may result, *in fine*, in the imposition of a disciplinary penalty. It is on the basis of that investigation and of the hearing of the staff member concerned that the Appointing Authority assesses, first, whether or not it is necessary to initiate disciplinary proceedings, second, whether or not those proceedings must, as the case may be, consist in the matter being referred to the Disciplinary Board and, third, where it initiates proceedings before the Disciplinary Board, the facts referred to that board.

64 Accordingly, since the powers of the Appointing Authority are not circumscribed, it cannot be ruled out that, if the administrative investigation had been conducted with care and impartiality, that investigation might have resulted in a different initial assessment of the facts and, thus, led to different consequences (judgment of 14 February 2017, *Kerstens* v *Commission*, T-270/16 P, not published, EU:T:2017:74, paragraph 82).

65 In the light of the foregoing, the applicant's claim for annulment of the decision to downgrade and reset the promotion points to zero must be upheld, without there being any need to examine the other arguments raised by the applicant.

66 However, for reasons connected with the sound administration of justice, the Court considers it appropriate to examine the second plea, relating to irregularities in the proceedings of the Disciplinary Board and a failure by the competent authority to hear the applicant at the conclusion of those proceedings.

Irregularities in the proceedings of the Disciplinary Board and a failure by the competent authority to hold a hearing at the conclusion of those proceedings

67 In support of the second plea, the applicant submits, first, that the proceedings of the Disciplinary Board were conducted irregularly and, secondly, that she was not heard by the competent authority at the end of those proceedings.

68 First, as regards the alleged irregularities in the proceedings of the Disciplinary Board, the applicant submits, in essence, first, that, at one of the six meetings of the Disciplinary Board, the Parliament was represented by two members and that, at the end of that meeting, she and her counsel were requested to leave the room once she had been heard, whereas the two representatives of the Parliament remained to deliberate with the members of the Disciplinary Board. That amounted to an infringement of Article 16(2) of Annex IX to the Staff Regulations. Secondly, at the other meetings, not all members of the Disciplinary Board were present, although they all participated in the deliberation and the adoption of the Disciplinary Board's opinion. That amounts to an infringement of the rights of the defence, since the Parliament is not able to confirm that, had all members of the Disciplinary Board attended all the meetings, the opinion of the Board would have been the same.

69 The Parliament submits that the presence of two of its representatives at one of the meetings of the Disciplinary Board can be explained by the fact that, as was pointed out in the context of the first plea (see paragraph 41 above), there were two aspects to the administrative investigation, namely the 'disciplinary' aspect and the 'harassment' aspect. The involvement of different investigators in those two aspects justifies the presence of the two officials before the Disciplinary Board. As for the fact that not all the members of the Disciplinary Board attended all the meetings, the Parliament explains that, as the Disciplinary Board was composed of full members and alternates, each one was entitled to deliberate and to adopt the Disciplinary Board's opinion at the end of the consultation and investigation procedure.

70 With regard to the fact that, at one of the six meetings of the Disciplinary Board, the Parliament was represented by two members, it must be noted that, although the authority responsible for an administrative investigation has broad discretion with regard to the conduct of that investigation (see paragraph 42 above), proceedings before the Disciplinary Board are, nonetheless, strictly circumscribed by the provisions of Annex IX to the Staff Regulations.

71 Article 16(2) of the Annex IX of the Staff Regulations expressly states that the institution shall be represented before the Disciplinary Board by an official mandated by the Appointing Authority to this effect and having rights equivalent to those of the official concerned.

72 In the present case, it was therefore not permissible for the Parliament to be represented, at one of the six meetings, by two officials. The applicant, whose interests were defended by a single representative, was thus placed in a situation that was, in principle, disadvantageous. Moreover, the Parliament's representatives should not have remained in the meeting room to deliberate with the members of the Disciplinary Board when the applicant and her counsel had been requested to leave the room. It must, therefore, be held that, on this point too, the proceedings at issue were vitiated by a procedural irregularity.

73 As to the fact that not all members of the Disciplinary Board attended all the meetings but were sometimes replaced by alternates, it is sufficient to note that Article 5 of Annex IX to the Staff Regulations provides for the appointment of alternate members.

74 In that regard, it should be noted that it is apparent from the documents on file that the final deliberations of the Disciplinary Board were made on the basis of the recordings and transcripts of all the witnesses heard, namely the four witnesses called by the complainants and the four witnesses called by the applicant.

75 The applicant's argument that not all members of the Disciplinary Board attended all the meetings must therefore be rejected.

76 Secondly, with regard to the alleged failure by the competent authority to hold a hearing after the Disciplinary Board issued its opinion, the applicant submits, inter alia, that only the Secretary-General of the Parliament is authorised to hear an official before deciding to impose a disciplinary penalty on him or her, and that such a hearing did not take place.

77 The Parliament submits that the decision of the Bureau of the Parliament of 13 January 2014 stipulates that the Secretary-General is the competent Appointing Authority, within the meaning of Article 22 of Annex IX, to hear the official after the issue of the Disciplinary Board's opinion and before the adoption of a disciplinary penalty such as a downgrading. The Parliament explains that, in the present case, it was the Director-General of DG PERS, acting on the basis of a delegation from the Secretary-General, who heard the applicant, accompanied by her lawyer. In addition, the applicant had two months in which to supplement the minutes of that hearing by submitting any observations in writing. Finally, even if the interview had taken place in the presence of the Secretary-General rather than the Director-General of DG PERS, the penalty adopted would have been the same, as the Secretary-General had access to the entirety of the file, that is, the submissions of the applicant and her counsel together with their observations.

78 In that regard, it must be borne in mind that the Court of Justice has always affirmed the importance of the right to be heard and its very broad scope in the EU legal order, considering that that right must apply in all proceedings which are liable to culminate in a measure adversely affecting a person (see judgment of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraph 85 and the case-law cited).

79 The right to be heard guarantees every person the opportunity to make known their views effectively during an administrative procedure and before the adoption of any decision liable to affect their interests adversely (see judgment of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraph 87 and the case-law cited).

80 In order to ensure that the person concerned is protected, the purpose of the right to be heard is, inter alia, to enable that person to correct an error or submit such information relating to their personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content (judgment of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraph 37).

81 The right to be heard also requires the authorities to pay due attention to the observations thus submitted by the person concerned, examining carefully and impartially all the relevant aspects of the individual case (see judgment of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraph 88 and the case-law cited).

82 The right to be heard must thus allow the authorities to investigate the matter in such a way as be able to adopt a decision in full knowledge of the facts and to state reasons for that decision adequately, so that, where appropriate, the person concerned can duly exercise his right to bring legal proceedings (see, by analogy, judgment of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraph 59).

83 Finally, the question whether there is an infringement of the right to be heard must be examined in relation, inter alia, to the legal rules governing the matter concerned (see judgment of 9 February 2017, *M.*, C-560/14, EU:C:2017:101, paragraph 33 and the case-law cited).

84 In that regard, Article 22(1) of Annex IX to the Staff Regulations provides that, after hearing the official concerned, the Appointing Authority shall take its decision within two months of receipt of the opinion of the Disciplinary Board and that reasons must be given for the decision.

85 As the Parliament itself points out, the decision of its Bureau of 13 January 2014 stipulates that the Secretary-General is the competent Appointing Authority for the purposes of Article 22 of Annex IX to the Staff Regulations to hear the official after the issue of the Disciplinary Board's opinion and before the adoption of a disciplinary penalty such as a downgrading ('Table VI – Disciplinary matters' of that decision).

86 The Court of Justice has already held that, by reason of the gravity of the disciplinary action to which the proceedings referred to in Annex IX of the Staff Regulations may lead, and having regard to the form of words employed, the article in question at that time, corresponding to Article 22 of Annex IX of the Staff Regulations, constituted a peremptory legal requirement and had to be interpreted as imposing on the Appointing Authority a duty to hear the official itself. Only by observing this principle and in conditions which ensure the protection of the rights of the officials concerned might the Appointing Authority, for reasons connected with the efficient running of its departments, entrust to one or more of its members the task of hearing the official concerned (judgment of 11 July 1968, *Van Eick* v *Commission*, 35/67, EU:C:1968:39, p. 344 and 345).

87 It is clear from that case-law that, in a case such as the present one, the Appointing Authority may entrust the task of hearing the person concerned only to one or more of its own members, and only for reasons relating to the efficient running of departments. Clearly that cannot be the situation in the present case, since the Appointing Authority is not composed of different members.

88 In any event, it must be noted that the Parliament has never claimed that there were reasons relating to the efficient running of departments to justify the fact that the applicant was heard by the Director-General of DG PERS rather than by the Secretary-General.

89 It must therefore be held that the decision to downgrade and reset the promotion points to zero was adopted in breach of the condition set out in Article 22(1) of Annex IX to the Staff Regulations.

90 The arguments put forward by the Parliament cannot affect that finding.

91 In that regard, first, the Parliament submits that the EU courts have acknowledged, in more recent cases, that the right to be heard should be considered to have been complied with as long as the person concerned was given the opportunity to make their views known orally or in writing prior to a decision adversely affecting them.

92 It must be observed that none of the judgments cited by the Parliament in its responses of 16 April 2019 related to disciplinary proceedings governed by Annex IX to the Staff Regulations, which may lead to penalties the gravity of which has been emphasised by the Court of Justice. That argument must therefore be rejected.

93 In any event, even if the fact that the applicant submitted written observations could be considered sufficient compliance with her right to be heard, it is apparent from the judgment of 11 July 1968, *Van Eick* v *Commission* (35/67, EU:C:1968:39), that those observations should have been presented directly to the Appointing Authority, to allow it to form its own view on the applicant's allegations, prior to taking its decision with full knowledge of the facts. In that regard, the fact that, prior to adopting his decision, the Secretary-General of the Parliament could have accessed the minutes of the applicant's hearing or her observations on the Disciplinary Board's opinion is not sufficient.

94 Secondly, the Parliament also argues that the wording of the provision in force at the time, namely the third paragraph of Article 7 of Annex IX to the Staff Regulations, calls for a stricter interpretation in requiring that '[the Appointing Authority] shall first hear the official concerned'. That argument must also be rejected, since no less strict an interpretation can be permitted of the wording of Article 22(1) of Annex IX to the Staff Regulations, which includes the following: 'After hearing the official, the Appointing Authority shall take its decision'.

95 Thirdly, the Parliament submits that the Staff Regulations, in the version in force at the time of the case giving rise to the judgment of 11 July 1968, *Van Eick* v *Commission* (35/67, EU:C:1968:39), did not contain any provision such as that in Article 4 of Annex IX to the Staff Regulations which expressly permits the official concerned to comment in writing.

96 However, under Article 4 of Annex IX to the Staff Regulations, the official concerned may be asked to comment in writing if he or she cannot be heard 'for objective reasons'. In the present case, the Parliament has not claimed that any such objective reasons exist. This argument must therefore be rejected.

97 In its responses of 16 April 2019, the Parliament refers to judgments in which the EU courts allowed the submission of written observations. However, it must be noted that none of the cases giving rise to said judgments concerned disciplinary proceedings governed by Annex IX to the Staff Regulations.

98 Fourthly, according to the Parliament, whereas the case giving rise to the judgment of 11 July 1968, *Van Eick* v *Commission* (35/67, EU:C:1968:39), concerned the removal of an official from their post, the situation in the present case is much less serious, since it relates only to downgrading by one grade, with step 3 being maintained. Despite the applicant's assertions to the contrary, the Parliament maintains that it would still be possible for her to be promoted to a managerial post.

99 In that regard, it should be noted that the case giving rise to the judgment of 11 July 1968, *Van Eick* v *Commission* (35/67, EU:C:1968:39), is not limited to situations where the penalty involves removal from post but covers all disciplinary proceedings in general due to the gravity of the consequences that such proceedings may have for the official concerned. It cannot be disputed that downgrading from a managerial post at grade AD 13 to an administrator post at grade AD 12 is a serious penalty since it involves the loss of a managerial position. Furthermore, it may be assumed that the chances of regaining a managerial post, where such a post has been lost following disciplinary proceedings, are particularly slim. This argument must, therefore, also be rejected.

100 Fifthly and finally, the Parliament considers that the circumstances of the case giving rise to the judgment of 11 July 1968, *Van Eick* v *Commission* (35/67, EU:C:1968:39), were different because, in that case, no hearing was held prior to the dismissal, whereas, in the present case, the applicant was heard on the basis of a delegation of authority from the Secretary-General of the Parliament to the Director-General of DG PERS, she was able to submit written observations and she was allowed to be accompanied and represented by her lawyer.

101 In that regard, it must be held that the argument upheld by the Court of Justice in its judgment of 11 July 1968, *Van Eick* v *Commission* (35/67, EU:C:1968:39), was based on the fact that the task of hearing the official concerned that was entrusted by the Appointing Authority to the Director-General of the authority was contrary to the relevant provisions of the Staff Regulations. In that regard, there is nothing in the judgment to suggest that the Court of Justice took account of the circumstance referred to by the Parliament. The last argument must therefore be rejected.

102 It follows from the foregoing that the applicant's plea in law alleging failure by the competent authority to hold a hearing at the conclusion of the proceedings of the Disciplinary Board must also be upheld.

The decision to reject the request for assistance

103 The applicant states that, when she was heard by the Director-General of DG PERS on 14 November 2016, she formally requested assistance from the Parliament as a result of specific and serious threats made against her by the complainants. She claims that it is not disputed that the Director-General of DG PERS twice had contact with her counsel due to threats made against her by some of the complainants. Similarly, it is not disputed that the Director-General of DG PERS approached the applicant's counsel to ask her to withdraw from two public events for which her name appeared on the list of participants. By his letter of 30 November 2016 proposing the temporary transfer of the applicant in her interest and for her safety, the Director-General of DG PERS acknowledged that the seriousness of the threats required measures to be taken to protect her. Finally, according to the applicant, the Appointing Authority was required to hear her, pursuant to Article 41 of the Charter of Fundamental Rights, before rejecting her request for assistance.

104 The Parliament argues that it is clear from the case-law that the Appointing Authority is not required to assist an official who, in the light of precise and relevant evidence, is suspected of being in serious breach of their professional obligations and thereby liable to disciplinary action. Furthermore, in the present case, the Appointing Authority responsible for assistance under Article 24 of the Staff Regulations took specific measures to protect the applicant in various situations, recommending that she avoid all contact with her colleagues and assigning her on a temporary basis to another unit.

105 In the reply, the applicant adds that she accepted the temporary reassignment only because of the serious threats made against her by some of the complainants. The fact that disciplinary proceedings were brought could not, in itself, justify a failure to hold the complainants accountable for wrongdoings committed against her.

106 It should be recalled that when, pursuant to Article 90(1) of the Staff Regulations, the Appointing Authority receives a request for assistance within the meaning of Article 24 of those regulations, it must, by reason of the duty to provide assistance and if faced with an incident which is incompatible with the good order and tranquillity of the service, intervene with all the necessary vigour and respond with the rapidity and solicitude required by the circumstances of the case with a view to ascertaining the facts and, consequently, taking the appropriate action in full knowledge of the facts. To that end, it is sufficient that the official who is seeking the protection of his or her institution provide at least some evidence of the reality of attacks of which he or she claims he or she was the victim. When such evidence is provided, the institution concerned is under an obligation to take the necessary measures, in particular to undertake an inquiry, with the cooperation of the complainant, to determine the facts which gave rise to the complaint (judgments of 26 January 1989, *Koutchoumoff* v *Commission*, 224/87, EU:C:1989:38, paragraphs 15 and 16; of 12 July 2011, *Commission* v *Q*, T-80/09 P, EU:T:2011:347, paragraph 84, and of 24 April 2017, *HF* v *Parliament*, T-570/16, EU:T:2017:283, paragraph 46).

107 However, the administration cannot be required to assist an official suspected, in the light of precise and relevant evidence, of having seriously breached his or her professional obligations and who is therefore liable to disciplinary proceedings, even where that breach has allegedly been caused by the unlawful actions of third parties (judgment of 23 November 2010, *Wenig* v *Commission*, F-75/09, EU:F:2010:150, paragraph 49).

108 Thus, in the present case, the Director-General of DG PERS, by his letter of 20 July 2017, informed the applicant that the administration was not required to assist an official suspected of being in serious breach of professional obligations.

109 In that regard, it is sufficient to note that, at the time that the applicant submitted her request for assistance, an administrative investigation relating to her was already underway in respect of matters which, if established, would be liable to lead to disciplinary proceedings. In any event, it is apparent from the file that, in the course of said investigation, precise and relevant evidence came to light giving the Parliament reason to suspect that the applicant had seriously breached her professional obligations and to consider that she might be liable to disciplinary proceedings.

110 It must therefore be concluded that the Parliament was entitled to reject the applicant's request for assistance, without a prior hearing.

111 The application for annulment of the decision rejecting the applicant's request for assistance must therefore be dismissed.

Costs

112 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, pursuant to Article 134(3) of those rules, the parties are to bear their own costs where each party succeeds on some and fails on other heads.

113 In the present case, since the application for annulment of the decision to downgrade and reset the promotion points to zero has been upheld and the application for annulment of the decision rejecting the applicant's request for assistance has been dismissed, the applicant and the Parliament must bear their own costs.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. **Annuls the decision of the European Parliament of 27 February 2017 imposing on UZ the disciplinary penalty of downgrading her from grade AD 13, step 3, to grade AD 12, step 3, and resetting her promotion points acquired at grade AD 13 to zero.**

2. **Dismisses the action as to the remainder.**

3. **Orders UZ and the Parliament to bear their own costs.**

Gratsias Labucka Ulloa Rubio

Delivered in open court in Luxembourg on 20 September 2019.

[Signatures]